IN THE HIGH COURT OF JUDICATURE AT JABALPUR, MP.

Criminal Appeal No. 2240 /2000.

(9380)

4/9/2000
DN Prajapati

APPELLANT.
(IN JAIL). : Miluram S/o. Charka,
aged about 35 years,
Occupation agriculture
R/o. Village- Amgaon,
PS-Jainagar District-
Sarguja, MP.

-Versus-

NON APPLICANT
RESPONDENT. : The State of M.P. through
PS- Jainagar District-
Sarguja, MP.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF CRIMINAL PROCEDURE-1973.

(18)

CRIMINAL APPEAL NO.2240 OF 2000

Miluram

Vs.

The State of M.P. (Chhattisgarh).

J U D G M E N T

(16)

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR.

CRIMINAL APPEAL NO.2240 OF 2000

Miluram

Vs.

The State of M.P. (Chhattisgarh).

J U D G M E N T

The appellant being aggrieved by the judgment of conviction and sentence recorded and awarded to the appellant by the learned Additional Sessions Judge, Surajpur in Sessions Trial No.217 of 1999 delivered on 17/8/2000 holding the appellant guilty for offence punishable under Section 304 Part-II I.P.C. sentencing him to undergo R.I. for seven years and to pay a fine of Rs.500/- has filed this appeal.

(2) The prosecution case in brief is that the appellant taking an exception to the acts of one Sukhanram, at about 5.00 P.M. on 25/4/1999 started beating the deceased with kicks, fists and stick. The deceased fell on the ground and on intervention of some of the villagers the deceased could be saved. Immediately thereafter the report was lodged and said Sukhanram was sent to the hospital for medical assistance. Though proper treatment was provided to him but unfortunately the deceased died. The said Sukhanram died on 8/5/1999. The cause of death according to the doctor was rupture of the lung as 8th rib had pierced the lung. After completing the investigation the police agency filed the challan. As the accused denied commission of the offence the accused was put to trial. After recording the evidence and hearing the parties the learned trial Court convicted the accused and awarded the sentence as detailed above.

(3) Shri Sunil Sinha, learned counsel for the appellant, submits that present is not a case of pre-determination ~~or~~ nor the facts show that the accused was armed with any weapon. According to him the prosecution has brought on the record that the deceased was armed with a Lathi.and on a trivial matter the accused started beating the deceased after snatching the lathi of the deceased. He submits that under these circumstances it cannot be held that the accused had the intention to commit murder of the deceased or to commit the culpable homicide not amounting to murder. He further submits that the Court below was unjustified in awarding such harsh sentence. He also submits that even if everything is taken to be correct then too an offence beyond Section 325 I.P.C. would not be made out and the accused deserves to be released on the sentence already undergone by him. On the other hand, learned counsel for the State Shri Praful Bharat submits that the manner in which the present appellant had earned a fight with an old man and hit him by means of kicks, fists and lathi would clearly show that the appellant had intention to commit the murder of the deceased. He submits that the Court below was not unjustified in convicting the appellant and awarding the sentence.

(4) I have heard the parties at length.

(5) PW.1 Tubobai, PW-2 Samudribai and PW-3 Jugeshwar all have turned hostile. They have not supported the prosecution case. PW-4 Santosh though in his examination-in-chief stated that the accused used a lathi in the said incident but in paragraph 5 of his statement he was forced to admit that the fact that the accused ~~had~~ used the lathi was not traceable in his case-diary statements. PW-5 Shivratan has also stated that the accused had used a lathi. Similar is the statements

of PW-6 Noharsai and PW-7 Dhurandhar.

(6) According to the prosecution witnesses the accused was taking an exception to the conduct of the deceased because the accused was of the opinion that because of the intervention of the deceased a village pond was being dug on his land.

(7) From the statements of the prosecution witnesses it does not appear that they are trying to falsely implicate the accused or fix him. The Court below was certainly justified in holding that the accused was author of the injury on the person of the deceased.

(8) The question for consideration still would be whether the accused was rightly held guilty for offence punishable under Section 304 Part-II I.P.C..

(9) The injury report of the deceased is Ex.P/11. According to the said report the deceased had suffered one visible injury on the back of the calf and was making complaint of pain on the back of the chest but there were no marks of injuries on the back of the chest. After the death of said Sukhanram the post-mortem was conducted by PW-9 Dr. Banshi Mohanlal Shrestha. His report is Ex.P/9. In his report he has recorded that the deceased had suffered fracture of 8th rib and the fractured rib had caused laceration in the right lung. According to the doctor as the right lung had suffered rupture the deceased had died.

(10) From the evidence available on the record it simply appears that the accused taking an exception to the conduct of the deceased had beaten him. The doctors say that the deceased had suffered two injuries; one on the back of the calf and the other on the back of the chest. Undisputedly, a

lathi was used ~~or the deceased was killed~~. On the basis of this evidence it cannot be held that either the accused had the intention to cause injury which was likely to cause death or had the knowledge that by his act the deceased might die. From the attending circumstances the legal inference only would be that the accused wanted to cause some grievous injury to the deceased.

(11) The totality of the circumstances show that the accused had caused only two injuries to the deceased. In fact, there was only one visible injury and the other injury was even not visible. Taking into consideration, the evidence available on the record, the conduct of the accused and the medical report I am of the opinion that the Court below was not justified in convicting the accused for an offence punishable under Section 304 Part-II I.P.C.. The conviction of the appellant for offence punishable under Section 304 Part-II I.P.C. is set aside, instead he is convicted under Section 325 I.P.C..

(12) After hearing the parties on the question of sentence I am of the opinion that if three years R.I. with a fine of Rs.500/- is awarded as sentence to the appellant, the same shall meet the ends of justice. The sentence is accordingly awarded. The appeal to the extent indicated above is partly allowed.

Sd/-
R.S. Garg
Judge
09/02/2001.